BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Delano J. and Valerie Woods Carroll Map 55H, Group C, Control Map 55H, Parcel 17.00 Residential Property Tax Year 2006	)) Washington County))

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$57,000	$ -0-	$57,000	$14,250

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on October 17, 2006 in Jonesborough, Tennessee. In attendance at the hearing were Delano J. Carroll, the appellant and Washington County Property Assessor's representative John Sims.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved parcel of land located at 607 Hiwassee Hill Drive in Johnson City, Tennessee. According to the assessor's records, subject tract contains 2.31 acres. As will be discussed below, the taxpayer argued that he actually owns 2.7 acres. According to Mr. Carroll, he, in fact, owns what the assessor presently identifies as parcel 17 (2.31 acres) and parcel 17.01 (.66 acres). Parcel 17.01 is assessed to Peter A. Paduch, et al. Parcel 17 is assessed to Mr. and Mrs. Carroll.

The taxpayer contended that the assessor's records should be corrected to show that he actually owns 2.7 acres which includes both parcels 17 and 17.01. Moreover, Mr. Carroll maintained that the current appraisal of subject acreage does not achieve equalization as evidenced by the lower per acre appraisal of parcel 17.01.

The taxpayer introduced proof to establish the following sequence of events. Subject tract was originally owned by Martha Laws. In 1974, Ms. Laws conveyed what the assessor now identifies as parcels 17 and 17.01 to her grandson. In 1976, Ms. Laws sold what the assessor now identifies as parcel 17.01 to her granddaughter. Ms. Laws' grandchildren held the acreage at issue until the early 1990's. On November 3, 1990, Ms. Laws' granddaughter conveyed what the assessor now identifies as parcel 17.01 to Peter A. and Dale F. Paduch. On June 19, 1992, Ms. Laws' grandson sold what the taxpayer contends included both parcels 17 and 17.01 to one Dr. VanBrocklin. On March 5, 2001, Dr. VanBrocklin conveyed the property to Mr. and Mrs. Carroll.

The taxpayer asserted that the same land was illegally sold twice and effectively places a cloud on his title. Mr. Carroll stated that when he purchased subject property in 2001 for $60,000 he believed it contained 2.7 acres as called for in the deed.

The assessor contended that the current appraisal of subject property should remain in effect. In support of this position, Mr. Sims introduced comparable sales to substantiate the current per acre appraisal of parcel 17. Mr. Sims also noted that Mr. Carroll's own survey indicates that he owns 2.31 acres.[1]

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at $57,000 based upon the comparable sales introduced by the assessor of property.

The administrative judge finds that the State Board of Equalization does not have jurisdiction to determine who owns the acreage in dispute (parcel 17.01). As the administrative judge noted at the hearing, the taxpayer needs to file suit if he believes he owns parcel 17.01. As the administrative judge also noted at the hearing, Mr. Carroll can certainly ask the assessor of property to have the ownership of parcel 17.01 shown to be "in conflict."

With respect to the issue of value, the administrative judge finds the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

Respectfully, the administrative judge finds that the taxpayer did not introduce any comparable sales by which to establish the fair market value of subject property on January 1, 2006, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

The administrative judge finds that the taxpayer's equalization argument must be rejected. The administrative judge finds that the April 10, 1984, decision of the State Board of Equalization in *Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982), holds that "as a matter of law property in Tennessee is required to be valued and equalized according to the 'Market Value Theory'." As stated by the Board, the Market Value Theory requires that property "be appraised annually at full market value and equalized by application of the appropriate appraisal ratio . . ." *Id.* at 1.

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[1] Mr. Carroll testified that the surveyor would not include parcel 17.01 in the survey because he believed it had been sold off.

The Assessment Appeals Commission elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

> In contending the entire property should be appraised at no more than $60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more underappraised than average does not entitle him to similar treatment. Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not adequately indicated how the properties compare to his own in all relevant respects. . . .

Final Decision and Order at 2. See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were underappraised . . ." Final Decision and Order at 3.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$57,000	$ -0-	$57,000	$14,250

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of

the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 3rd day of November, 2006.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Delano J. and Valerie Woods Carroll
Monty Treadway, Assessor of Property